

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
 )  
WILLIAM E. LOY, ) Bankruptcy Case No. 99-60368  
 )  
Debtor. )  
\_\_\_\_\_)  
 )  
FIRST USA, N.A., )  
 )  
Plaintiff, )  
 )  
vs. ) Adversary Case No. 99-6026  
 )  
WILLIAM E. LOY, )  
 )  
Defendant. )

OPINION

This matter having come before the Court on a Motion to Vacate Default Judgment filed by the Debtor/Defendant, on January 7, 2000, and Response to Motion to Vacate Default Judgment filed by the Plaintiff, First USA, N.A., on January 24, 2000; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The facts in this matter are not in serious dispute and are, in pertinent part, as follows:

1. Debtor/Defendant filed for relief under Chapter 7 of the Bankruptcy Code on April 20, 1999. The evidence indicated that Creditor, First USA, N.A., was on notice of the Debtor's bankruptcy

filing prior to his discharge.

2. On August 10, 1999, Debtor received a discharge under Chapter 7 of the Bankruptcy Code, and his case was then closed, on August 13, 1999.

3. On August 31, 1999, Creditor, First USA, N.A., filed a Motion to Reopen Case to file an objection to discharge. A hearing was held on September 21, 1999, at which time Judge Kenneth J. Meyers entered an Order allowing First USA, N.A.'s Motion to Reopen Case to file a complaint to determine dischargeability of debt. However, the Court made no determination as to the timeliness of such a complaint.

4. On September 24, 1999, an Order was entered granting the Plaintiff, First USA, N.A., until October 4, 1999, to file a complaint.

5. On October 12, 1999, First USA, N.A. still had not filed a complaint, and the Court entered an Order directing the Clerk to close the case. On October 15, 1999, the Debtor's Chapter 7 bankruptcy case was again closed.

6. On October 21, 1999, Creditor, First USA, N.A., again filed a Motion to Reopen Case to file an adversary complaint, and an Order was entered on that same date allowing the case to once again be reopened for the purpose of allowing First USA, N.A. to file a complaint to determine dischargeability of debt.

7. The instant Complaint to Determine Dischargeability of Debt was filed on October 21, 1999, and summons was duly issued.

8. The Debtor/Defendant believed that his then attorney, John O. Cutright, was handling the adversary proceeding. It was not until November 1999, that the Defendant received notice of the Plaintiff's entitlement to a default. Debtor/Defendant attempted, to no avail, to correct the problem with his bankruptcy attorney, and, on January 5, 2000, Debtor/Defendant retained new counsel in this matter. Thereafter, on January 7, 2000, the Debtor filed the instant Motion to Vacate Default Judgment.

Pursuant to Rule 4007 of the Federal Rules of Bankruptcy Procedure, the deadline for filing a complaint to determine dischargeability, under 11 U.S.C. § 523, is jurisdictional. In re Kirsch, 65 B.R. 297 (Bankr. N.D. Ill. 1986); In re Lyman, 166 B.R. 333 (Bankr. S.D. Ill. 1994); and In re Ham, 174 B.R. 104 (Bankr. S.D. Ill. 1994). Rule 4007(c) states, in pertinent part, as follows:

A complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

In the instant case, it is clear that the Creditor did not file any type of motion to extend the time fixed under Rule 4007(c) to file a complaint pursuant to 11 U.S.C. § 523. In fact, the Creditor never filed any type of motion to extend the bar date, but rather filed a

motion to reopen the Debtor's bankruptcy case some three weeks after the discharge in Chapter 7 had already been entered. The Court notes that at the time of the initial Motion to Reopen Case, which was filed on August 31, 1999, the matter was scheduled for hearing. At hearing, on September 21, 1999, while Judge Meyers allowed the case to be reopened, the Court made no determination as to the timeliness of any complaint that would be filed.

The applicable bankruptcy rules make it very clear that any extension of the bar date under Rule 4007(c) must be granted upon a motion that is filed prior to the expiration of the Rule 4007(c) deadline. In his decision of In re Ham, found at 174 B.R. 104, Judge Kenneth J. Meyers accurately pointed out that, "Once the limitation period expires, a creditor is jurisdictionally barred from seeking a determination of dischargeability pursuant to § 523(c), and the court has no choice but to dismiss any complaint filed after that time." The instant case falls squarely within the provisions of Rule 4007(c), and the mandate of the Court in In re Ham in that this Court had no jurisdiction to rule upon the Plaintiff's Complaint to Determine Dischargeability of Debt from the onset of this case. The Court has no discretion to enlarge the time period under Bankruptcy Rule 4007(c) on the basis of excusable neglect as requested by the Plaintiff in that such request for extension of time was made after the Rule 4007(c) time period had already expired. Pursuant to Rule 9006(b)(3) of the Federal

Rules of Bankruptcy Procedure, the time period and extensions of said time period under Rule 4007(c) are explicitly excepted from the excusable neglect standard. See: In re Kirsch, supra. Thus, the Court has no choice but to find that the Motion to Vacate Default Judgment filed by Debtor/Defendant on January 7, 2000, should be allowed, and that the instant adversary proceeding should be dismissed with prejudice.

ENTERED: February 24, 2000.

/s/ GERALD D. FINES  
United States Bankruptcy Judge